

ORIGINAL

RECEIVED

MAR - 4 1996

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of )  
)  
Interconnection Between Local Exchange )  
Carriers and Commercial Mobile Radio )  
Service Providers )  
)  
Equal Access and Interconnection Obligations )  
Pertaining to Commercial Mobile Radio )  
Service Providers )

CC Docket No. 95-185

DOCKET FILE COPY ORIGINAL

COMMENTS OF WESTERN WIRELESS CORPORATION

No. of Copies rec'd  
List ABCDE

CA 4

Gene DeJordy, Esq.  
Christopher Johnson  
Western Wireless Corporation  
330 120th Ave., N.E. - Suite 200  
Bellevue, WA 98005  
206-635-0300

March 4, 1996

## TABLE OF CONTENTS

SUMMARY .....	i
I. INTRODUCTION .....	3
II. GENERAL COMMENTS .....	7
A.    Background .....	7
B.    CMRS Providers Are Held Hostage To LEC Demands Regarding Interconnection To The Public Switched Network. ....	8
C.    LECs Are Not Abiding By The Commission's Rules and Policies Governing Interconnection With CMRS Providers. ....	9
III.    COMPENSATION FOR INTERCONNECTED TRAFFIC BETWEEN LECs AND CMRS PROVIDERS' NETWORKS. ....	11
A.    Compensation Arrangements. ....	11
1.    Existing Compensation Arrangements. ....	11
a)    Type of Interconnection Arrangements. ....	11
b)    Jurisdictional Nature of Traffic. ....	12
c)    Origination and Termination of Traffic. ....	13
d)    Mutual Compensation. ....	13
2.    General Pricing Proposal: Cost-Based, Nondiscriminatory, Competitively-Neutral Interconnection Rates. ....	14
3.    Specific Pricing Proposal: "Bill and Keep" Reciprocal Compensation. .	16
B.    Implementation of Compensation Arrangements. ....	17
1.    Negotiations and Tariffing: LECs Should Be Required To File Interconnection Tariffs; LECs Should Be Permitted To Supplement These Tariffs With Publicly Filed Privately Negotiated Contracts. ....	17
2.    Jurisdictional Issues: The Commission Has The Requisite Jurisdiction Under Section 201(a) and 332(c) of the Communications Act of 1934 To Adopt Its Tentative Conclusions, Or, in the Alternative, the Commission May Under the Telecommunications Act of 1996 Require LECs To Adopt "Bill and Keep" Reciprocal Compensation On An Interim Basis Until Cost Based Interconnection Rates Are Established. ....	18
IV.    INTERCONNECTION FOR THE ORIGINATION AND TERMINATION OF INTERSTATE INTEREXCHANGE TRAFFIC .....	22
V.    CONCLUSION .....	23

## SUMMARY

Western Wireless supports the Commission's tentative conclusions. CMRS providers are currently subject to anti-competitive and unreasonably discriminatory rates, terms, and conditions for interconnection. Accordingly, Western Wireless urges the Commission to adopt its tentative conclusions, including:

- (1) "at least for an interim period, interconnection rates for local switching facilities and connections to end users should be priced on a 'bill and keep' basis;"
- (2) "rates for dedicated transmission facilities connecting LEC and CMRS networks should be set based on existing access charges for similar transmission facilities;"
- (3) "interconnection compensation arrangements should be made publicly available;" and
- (4) CMRS providers should be entitled to recover access charges from IXC's.

Furthermore, in the interest of establishing truly non-discriminatory interconnection arrangements based upon the principle of mutual compensation, the cost of facilities interconnecting a CMRS provider's MTSO to the local exchange network -- facilities that are used for the mutual benefit of both carriers -- must be borne by both carriers, not only the CMRS provider.

The Commission's authority to adopt its tentative conclusions is based upon: (1) Sections 201(a) and 332(c) of the Communications Act of 1934, 47 U.S.C. Section 201(a) and Section 332(c), which provide the FCC with jurisdiction over LEC-CMRS interconnection arrangements; and (2) the jurisdictionally interstate nature of CMRS traffic. In the alternative, if the Commission concludes that Section 201(a) and Section 332(c) do not vest the FCC with jurisdiction over LEC-CMRS interconnection arrangements, the Commission may nevertheless, consistent with the dual regulatory framework established by the federal legislation, lawfully

adopt a mandatory federal policy requiring “bill and keep” reciprocal compensation, on an interim basis, for the exchange of traffic between LECs and CMRS providers until: (i) a State determines that a LEC’s interconnection rates are cost-based, or (ii) a CMRS provider negotiates and enters into a binding cost-based interconnection agreement with a LEC. Accordingly, whether it proceeds under Section 201(a) and Section 332(c) or the recently enacted federal legislation, the Commission may lawfully adopt, and the public interest would clearly be served by the adoption of, its tentative conclusions.

Western Wireless urges the Commission to expeditiously adopt its tentative conclusions and immediately adopt an order requiring LECs to fully account for all payments made by CMRS providers on December 15, 1995, and thereafter, for the local switching component of interconnection. In the interest of regulatory parity, Western Wireless also urges the Commission to allow CMRS providers to recover access charges from IXC.

Absent a Commission-imposed “bill and keep” reciprocal compensation requirement and an accounting order, CMRS providers will continue to be subject to unjust and unreasonably discriminatory interconnection rates until such time as cost-based interconnection rates are established. If LECs are allowed to maintain unreasonably discriminatory interconnection rates until cost-based rates are established, it would seriously jeopardize the goal of the Commission to create a fully-competitive local services market and would threaten the ability of CMRS providers to compete in an increasingly competitive local services market.

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

RECEIVED

MAR - 4 1996

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of	)	
	)	
Interconnection Between Local Exchange	)	CC Docket No. 95-185
Carriers and Commercial Mobile Radio	)	
Service Providers	)	
	)	
Equal Access and Interconnection Obligations	)	
Pertaining to Commercial Mobile Radio	)	
Service Providers	)	

**COMMENTS OF WESTERN WIRELESS CORPORATION**

Western Wireless Corporation ("Western Wireless") hereby submits its Comments in support of the Commission's tentative conclusions in its *Notice of Proposed Rulemaking* in the above-captioned proceeding.<sup>1</sup> A review of interconnection arrangements between local exchange carriers ("LECs") and local service providers reveals that Commercial Mobile Radio Service ("CMRS") providers are subject to anti-competitive and unreasonably discriminatory rates, terms, and conditions for interconnection. If these discriminatory practices are allowed to continue unabated, the development of wireless services as a potential competitor to LEC services will be seriously jeopardized.

The recent introduction of competition in the local wireline market highlights the unreasonably discriminatory LEC interconnection practices that CMRS providers have long endured. Competitive local exchange carriers ("CLECs") have been able to negotiate favorable

---

<sup>1</sup> *In the Matter of Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers* (CC Docket No. 95-185), *Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Service Providers*, (CC Docket No. 94-54), *Notice of Proposed Rulemaking*, FCC 95-505 (released January 11, 1996) (*LEC-CMRS Interconnection Proceeding*).

## **Western Wireless Corporation**

interconnection arrangements with reciprocal compensation and, in some states, public service commissions have required “bill and keep” reciprocal compensation for the exchange of traffic between LECs and CLECs. CMRS providers, however, continue to be subject to grossly-excessive interconnection rates that are not related to a LEC’s costs of providing interconnection. The Commission must take action to remedy this situation.

It is well-established that the FCC has plenary jurisdiction over CMRS providers and that States may not subject CMRS providers to entry and rate regulation. Accordingly, States have generally concluded that they lack the requisite authority to extend the benefits of reciprocal compensation to CMRS providers.

In the absence of authority to impose local service obligations and responsibilities on wireless carriers, the Department will not extend the benefit of mutual compensation to such carriers.<sup>2</sup>

It is therefore imperative that the Commission exercise its lawful authority over LEC-CMRS interconnection arrangements and adopt its tentative conclusions, including requiring “bill and keep” reciprocal compensation, for the exchange of traffic between LECs and CMRS providers.

---

<sup>2</sup> *DPUC Investigation Into Wireless Mutual Compensation Plans*, State of Connecticut Department of Public Utility Control, Docket No. 95-04-04 (September 22, 1995).

## I. INTRODUCTION

As a cellular service operator and Personal Communications Service (“PCS”) licensee, Western Wireless has experienced, first-hand, anti-competitive and unreasonably discriminatory interconnection practices by the LECs. Specifically, Western Wireless is currently subject to the following practices which directly violate the FCC rules and policies governing interconnection: (i) confiscatory interconnection rates that are not related to the LECs’ costs of providing interconnection; (ii) LEC interconnection practices that do not recognize a CMRS provider’s right to mutual compensation; and (iii) non-negotiable terms and conditions of interconnection. The public interest and the law demand reform of LEC interconnection practices -- practices that violate the Commission’s rules and policies governing interconnection, as well as the interconnection principles established in the Telecommunications Act of 1996.<sup>3</sup>

Western Wireless therefore urges the Commission to adopt its tentative conclusions, including:<sup>4</sup>

- (1) “at least for an interim period, interconnection rates for local switching facilities and connections to end users should be priced on a “bill and keep” basis;”
- (2) “rates for dedicated transmission facilities connecting LEC and CMRS networks should be set based on existing access charges for similar transmission facilities;”
- (3) “interconnection compensation arrangements should be made publicly available;”  
and

---

<sup>3</sup> *The Telecommunications Act of 1996*, Section 251(b)(5), Pub. L. No. 104-104, 110 Stat. 56 (1996).

<sup>4</sup> *LEC-CMRS Interconnection Proceeding*, FCC 95-505 at para. 3.

**Western Wireless Corporation**

- (4) CMRS providers should be entitled to recover access charges from interexchange carriers ("IXCs").

Furthermore, in the interest of establishing truly non-discriminatory interconnection arrangements based upon the principle of mutual compensation, the cost of facilities interconnecting a CMRS provider's mobile telephone switching office ("MTSO") to the local exchange network -- facilities that are used for the mutual benefit of both carriers -- must be borne by both carriers, not only the CMRS provider. In the ideal world -- granted, a world that does not exist today in the local services market -- two carriers that choose to interconnect their respective networks for the mutual exchange of traffic would share the cost of facilities necessary for interconnection. In the not-so-ideal world -- a world that currently exists in the local services market -- the carrier with market power (*i.e.*, LECs) dictates the rates, terms, and conditions of interconnection. This disparity in market power is precisely the reason why the Commission needs to exercise its lawful authority over LEC-CMRS interconnection arrangements and adopt measures to ensure that such arrangements are just and reasonable.

The Commission's authority to adopt its tentative conclusions is based upon: (1) Sections 201(a) and 332(c) of the Communications Act of 1934, 47 U.S.C. Section 201(a) and Section 332(c), which provide the FCC with jurisdiction over LEC-CMRS interconnection arrangements; and (2) the jurisdictionally interstate nature of CMRS traffic. In the alternative, if the Commission concludes that Section 201(a) and Section 332(c) do not vest the FCC with jurisdiction over LEC-CMRS interconnection arrangements, the Commission may nevertheless, consistent with the dual regulatory framework established by the federal legislation, lawfully adopt a mandatory federal policy requiring "bill and keep" reciprocal compensation, on an



## **Western Wireless Corporation**

interim basis, for the exchange of traffic between LECs and CMRS providers until: (i) a State determines that a LEC's interconnection rates are cost-based, or (ii) a CMRS provider negotiates and enters into a binding cost-based interconnection agreement with a LEC. Accordingly, whether it proceeds under Section 201(a) and Section 332(c) or the recently enacted federal legislation, the Commission may lawfully adopt, and the public interest would clearly be served by the adoption of, its tentative conclusions.

Western Wireless urges the Commission to expeditiously adopt its tentative conclusions and immediately adopt an order requiring LECs to fully account for all payments made by CMRS providers on December 15, 1995,<sup>5</sup> and thereafter, for the local switching component of interconnection. CMRS providers should be reimbursed for payments made to LECs for the local switching component of interconnection because LEC charges for local switching are, on their face, unreasonably discriminatory. LECs charge disparate amounts for the local switching component of interconnection depending upon the interconnecting carrier. LECs do not charge other LECs for local switching. LECs have negotiated reasonable local switching rates with CLECs and, in some cases, "bill and keep" reciprocal compensation. CMRS providers, however, continue to be subject to unreasonably discriminatory local switching rates -- rates that are significantly higher than the rates paid by other local service providers.

Absent a Commission-imposed "bill and keep" reciprocal compensation requirement and an accounting order, CMRS providers will continue to be subject to unjust and unreasonably discriminatory interconnection rates until such time as cost-based interconnection rates are

---

<sup>5</sup> The date the Commission adopted its tentative conclusions in this proceeding.

**Western Wireless Corporation**

established. If LECs are allowed to maintain unreasonably discriminatory interconnection rates until cost-based rates are established, it would seriously jeopardize the goal of the Commission to create a fully-competitive local services market and would threaten the ability of CMRS providers to compete in an increasingly competitive local services market.

## **II. GENERAL COMMENTS**

### **A. Background**

Western Wireless, through its wholly-owned subsidiaries, holds numerous licenses to provide non-wireline cellular radiotelephone service ("cellular"), personal communications service ("PCS"), specialized mobile radio ("SMR") service, and paging and radiotelephone service ("PARS"). Western Wireless' cellular systems provide service to thousands of consumers in rural America -- consumers located in California, Colorado, Idaho, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, South Dakota, Texas, and Wyoming. Additionally, and complimenting its cellular presence in western United States, Western Wireless will soon provide PCS in the following major trading areas ("MTAs"): Des-Moines-Quad Cities, El Paso-Albuquerque, Honolulu, Oklahoma City, Portland, and Salt Lake City. Together, Western Wireless' cellular and PCS systems cover a large portion of western United States.

Western Wireless is committed to building-out its cellular systems and further expanding its coverage to serve the communication needs of the public in rural and urban America. Western Wireless also is committed to expeditiously building-out its PCS systems to provide consumers the benefits of a fully-competitive wireless communications market and will be one of the first PCS providers to offer service to the public.<sup>6</sup>

Like most CMRS providers, Western Wireless has focussed its efforts, to date, on constructing and placing in operation a state-of-the-art wireless communications network and,

---

<sup>6</sup> Western Wireless commenced offering PCS in Hawaii in February 1996.

## **Western Wireless Corporation**

unlike competitive landline local service providers, has not pursued legal and regulatory remedies to enforce its interconnection rights. The time, however, has come for CMRS providers, as co-carriers, to exert their lawful rights for just and reasonable interconnection rates and for the Commission to enforce these rights.

### **B. CMRS Providers Are Held Hostage To LEC Demands Regarding Interconnection To The Public Switched Network.**

Interconnection costs represent a significant portion of the operational costs of providing CMRS. These costs, however, have been historically viewed as simply the cost of doing business. This is so because, notwithstanding the fact that CMRS providers are considered “co-carriers” and not customers of LECs, CMRS providers, in practice, have been, and continue to be, “captive customers” of LEC services. CMRS providers are held hostage to the demands of the LECs. Consequently, cellular and PCS providers, like Western Wireless, have little or no leverage in negotiating competitive interconnection arrangements with the LECs. In fact, because the rates, terms, and conditions of interconnection have been, and continue to be, generally non-negotiable, interconnection agreements have been largely negotiated by technical personnel at Western Wireless, whose main concern has been to ensure technical compatibility between the respective networks. Western Wireless urges the Commission to address the interconnection issues raised by the imbalance of market power between LECs and CMRS providers by adopting its tentative conclusions, including requiring “bill and keep” reciprocal compensation for the exchange of traffic between CMRS providers and LECs.

**C. LECs Are Not Abiding By The Commission's Rules and Policies Governing Interconnection With CMRS Providers.**

The statutory and regulatory requirements governing LEC-CMRS interconnection are, on their face, clear. These requirements are as follows:

- (i) LECs must establish physical interconnection with other carriers.<sup>7</sup>
- (ii) CMRS providers are entitled to the type of interconnection (*i.e.*, Type 1 or Type 2) that is reasonable given their system design. Separate interconnection arrangements for interstate and intrastate traffic are not feasible and therefore state regulation of the type of interconnection between CMRS providers and LECs is preempted.<sup>8</sup>
- (iii) The principle of mutual compensation applies to LECs and CMRS providers. LECs must compensate CMRS providers for the reasonable costs of terminating traffic that originates on LEC facilities, and CMRS providers must compensate LECs for the reasonable costs of terminating traffic that originates on CMRS facilities.<sup>9</sup>
- (iv) The terms and conditions of CMRS interconnection must be negotiated in good faith.<sup>10</sup>
- (v) CMRS providers are co-carriers, not end users, with respect to LECs.<sup>11</sup>

---

<sup>7</sup> 47 U.S.C. Section 201(a); 47 U.S.C. Section 332(c)(1)(B).

<sup>8</sup> *In the Matter of the Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carriers*, 4 FCC Rcd 2369 (1989) (*Interconnection Order III*).

<sup>9</sup> *In the Matter of Implementation of Sections 3(n) and 332 of the Communications Act -- Regulatory Treatment of Mobile Services*, 9 FCC Rcd 1411, para. 232 (1994) (*CMRS Second Report and Order*).

<sup>10</sup> *In the Matter of the Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carriers*, 2 FCC Rcd 2910, 2912 (1987) (*Interconnection Order II*).

<sup>11</sup> *Interconnection Order III*, 4 FCC Rcd at 2373.

## **Western Wireless Corporation**

Notwithstanding these unambiguous requirements, CMRS providers have been, and continue to be, subject to unjust and unreasonably discriminatory interconnection arrangements. LECs are simply, and unjustifiably, not abiding by the Commission's rules and policies governing LEC-CMRS interconnection arrangements. There is no "grey area" or question of interpretation or reasonable argument for noncompliance. It is therefore incumbent upon the Commission to exercise its lawful authority over LEC-CMRS interconnection arrangements, require LECs to abide the Commission's rules, and adopt its tentative conclusions in this proceeding.

**III. COMPENSATION FOR INTERCONNECTED TRAFFIC BETWEEN  
LECs AND CMRS PROVIDERS' NETWORKS.**

**A. Compensation Arrangements.**

**1. Existing Compensation Arrangements.**

A brief look at the history of interconnection arrangements between CMRS providers and LECs is instructive. Interconnecting to the local exchange network has been historically viewed as a technical issue, rather than a legal/regulatory issue. This is so because CMRS providers are largely viewed by LECs as “customers” rather than “co-carriers” with equal rights. Consequently, the rates, terms, and conditions of interconnection are generally non-negotiable, leaving only technical issues, such as the routing of Feature Group A, B, C, or D traffic and whether to interconnect at the tandem or end office (Type 2A or 2B interconnection), to be negotiated by a carrier’s technical personnel.

**a) Type of Interconnection Arrangements.**

The vast majority of Western Wireless' interconnection arrangements consist of Type 2A arrangements, whereby mobile traffic is routed from the cellular MTSO to a LEC tandem office. Intrastate, intraLATA traffic is then routed at the tandem office to LEC end offices for termination. Interstate or interLATA traffic is routed at the tandem office to IXC's. The specific charges incurred by Western Wireless for interconnection to the local exchange network varies depending upon the LEC, but typically fall within the following categories:

## Western Wireless Corporation

<u>Rate Element</u>	<u>Cost</u>
1. Channel Facility	(i) fixed - monthly (ii) nonrecurring
2. Dedicated Transport	(i) fixed - monthly (ii) per mile - monthly (iii) nonrecurring
3. Local Transport	per MOU - monthly
4. End Office Switching	per MOU - monthly
5. Message Toll	per MOU - monthly
6. Multiplexing	fixed - monthly
7. Special Construction	nonrecurring
8. Order Modification Charge	nonrecurring

### **b) Jurisdictional Nature of Traffic.**

Approximately 75% of the traffic that originates on Western Wireless' network is intrastate, intraLATA and 25% is interstate or interLATA. This does not mean, however, that 75% of Western Wireless traffic is routed over purely intrastate, intraLATA facilities. All mobile traffic, intrastate or interstate, is routed to a Western Wireless MTSO, which routes the traffic to the appropriate destination. Western Wireless typically routes mobile traffic that originates in two or more states to a MTSO located in another state. The MTSO records and routes the traffic to the appropriate destination. Consequently, intrastate calls are, at times, routed over interstate facilities to a MTSO located in another state and then routed back to an end user located in the state where the call originated.



## **Western Wireless Corporation**

### **c) Origination and Termination of Traffic.**

Approximately 80% of the total traffic that is routed over Western Wireless' network originates on its network and approximately 20% originates on the local exchange network. Over the past few years, Western Wireless has witnessed a trend in which more and more traffic originates on the local exchange network and terminates on the wireless network. As the number of wireless subscribers continues to grow, the day will come when the wireless network terminates more traffic than the wireline network.

### **d) Mutual Compensation.**

A review of Western Wireless' interconnection arrangements with LECs reveals that these arrangements contain no language about, or make any reference to, reciprocal compensation for traffic terminating on Western Wireless' network. This practice is in direct violation of the Commission's rules and policies that require mutual compensation for the exchange of traffic between LECs and CMRS providers.

In 1987, the Commission stated its mutual compensation requirement.

In establishing the reasonable interconnection standard, we also expected telephone companies and cellular carriers to observe the principle of mutual compensation for switching. That is, we expected each entity to recover the costs of switching traffic for the other entity's network. This was regarded as necessary because just as a telephone company performs switching functions to terminate mobile-to-land traffic, so may a cellular company terminate land-to-mobile traffic. It was also considered necessary in order to promote our policy of entitling cellular carriers to interconnection on the same basis as ITCs, which routinely receive mutual compensation for switching from other local exchange carriers.<sup>12</sup>

---

<sup>12</sup> *Interconnection Order II*, 2 FCC Rcd at 2915.

## Western Wireless Corporation

In 1989, the Commission once again affirmed its mutual compensation requirement.

[A] cellular's subscriber rates, or the costs recovered, are not germane to the issue of mutual compensation arrangements between co-carriers. We are concerned that a cellular carrier may employ its mobile telephone switching office (MTSO) to originate mobile calls directed to landline customers, and to terminate landline calls destined for cellular subscribers. Since such a situation involves a co-carrier using its facilities to originate and complete traffic, a landline company is required to compensate a cellular operator for the switching costs incurred in terminating a call from a landline to a mobile unit.<sup>13</sup>

LECs are directly violating this mutual compensation policy. Western Wireless is not being compensated for the switching costs incurred in terminating a call from a landline customer to a mobile customer -- not for interstate or intrastate calls. Western Wireless therefore urges the Commission to enforce the requirement of mutual compensation for the exchange of both interstate and intrastate traffic between CMRS providers and LECs. As explained below, "bill and keep" reciprocal compensation should be required in that it is the most appropriate mechanism to compensate local carriers for terminating traffic that originates on another carrier's network.

### **2. General Pricing Proposal: Cost-Based, Nondiscriminatory, Competitively-Neutral Interconnection Rates.**

The Commission's goal of maximizing the benefits of telecommunications for the American consumer and for American society as a whole will be furthered by adopting rules and policies that ensure that interconnection rates are cost-based, nondiscriminatory, and

---

<sup>13</sup> *Interconnection Order III*, 4 FCC Rcd at 2373.

## Western Wireless Corporation

competitively-neutral.<sup>14</sup> As stated by the Commission, functionally-equivalent services should be available to all classes of consumers at the same prices unless there are cost differences or policy considerations that justify different rules.<sup>15</sup> Today, LEC interconnection rates and services vary depending upon the interconnecting local service provider. Western Wireless supports an interconnection pricing structure that reflects the costs of providing service, as opposed to the identity of the interconnecting carrier. This pricing structure should include the following:

- (1) **A flat-rated charge for dedicated facilities that interconnect a CMRS provider's MTSO to the local exchange network for the mutual exchange of traffic.** This charge should be equally borne by both carriers, or, at a minimum, in proportion to the traffic that originates on each carrier's network.
- (2) **A flat-rated charge for dedicated facilities used to interconnect LEC central offices for the exchange of traffic between CMRS providers and LECs.** This charge should be equally borne by both carriers, or, at a minimum, in proportion to the traffic that originates on each carrier's network.
- (3) **A per minute of use ("MOU") charge for common facilities used to interconnect LEC central offices for the exchange of traffic between CMRS providers and LECs.** The MOU charge must reflect the percentage of traffic that originates on each carrier's network.
- (4) **A flat-rated charge for local switching and connection to end users.** "Bill and keep" reciprocal compensation should be required until it can be demonstrated that the cost of providing local switching and connection to end users exceeds the costs associated with measuring, billing, collecting, and reconciling traffic. If such a showing is made, the local switching charge should then be based upon the incremental cost of capacity necessary for switching traffic to end users on the CMRS network.

Western Wireless submits that these interconnection pricing principles will provide the

---

<sup>14</sup> *LEC-CMRS Interconnection Proceeding*, FCC 95-505 at para. 4.

<sup>15</sup> *Id.*

## Western Wireless Corporation

necessary framework for the establishment of truly cost-based, nondiscriminatory, competitively-neutral interconnection arrangements between CMRS providers and LECs. The Commission should therefore be guided by these pricing principles in crafting rules and policies governing LEC-CMRS interconnection arrangements.

### 3. **Specific Pricing Proposal: “Bill and Keep” Reciprocal Compensation.**

“Bill and keep” is the most appropriate compensation arrangement for the termination of traffic that originates on another carrier’s network *until* a carrier can demonstrate and quantify its incremental costs, if any, of terminating traffic. Today, LECs take full advantage of their control over local bottleneck facilities and charge an excessive, unjust, and unreasonably discriminatory amount for interconnection. For example, Western Wireless pays between 2 and 8 cents a minute for just the local switching component of interconnection. Western Wireless submits that interconnection rates of this magnitude amount to extortion.

A LEC’s rates should be based upon its incremental costs, if any, of providing interconnection to the local exchange network. Western Wireless submits that a per MOU charge for local switching has no relation whatsoever to the cost of providing interconnection. First, LECs incur little or no incremental cost for providing local switching for the termination of traffic that originates on a CMRS provider’s network. The local switching component of a LEC’s network exists to provide switching for local landline traffic and additional capacity is not necessary to provide switching for traffic that originates on a CMRS provider’s network. Second, even if a LEC could demonstrate that there is an incremental cost associated with terminating traffic that originates on a CMRS provider’s network, this cost is not related to

## Western Wireless Corporation

usage. LECs and CMRS providers have designed and implemented a network infrastructure capable of meeting their existing and future communications requirements during peak usage. This network infrastructure includes, among other things, (i) switches, (ii) local facilities connecting end users to the network, and (iii) facilities interconnecting points within the network. The communication requirements of a CMRS provider impact the design of a LEC's network infrastructure only to the extent that a CMRS provider requires network resources that otherwise would not be required by a LEC to meet its communication needs. Western Wireless submits that LECs incur little or no incremental cost for terminating traffic that originates on a CMRS provider's network during peak periods, and incur no cost for terminating CMRS traffic during off-peak periods.<sup>16</sup> Lastly, "bill and keep" is used by incumbent LECs for the exchange of traffic and should, likewise be used for the exchange of traffic between CMRS providers and LECs. For the foregoing reasons, the Commission should require "bill and keep" reciprocal compensation for the exchange of traffic between CMRS providers and LECs.

### **B. Implementation of Compensation Arrangements.**

#### **1. Negotiations and Tariffing: LECs Should Be Required To File Interconnection Tariffs; LECs Should Be Permitted To Supplement These Tariffs With Publicly Filed Privately Negotiated Contracts.**

Today, most interconnection agreements between LECs and CMRS providers are privately negotiated. Western Wireless supports imposing a requirement on LECs to file a tariff

---

<sup>16</sup> For a discussion of the incremental costs of terminating traffic that originates on another carrier's network, see *The Economics of Interconnection* by Gerald W. Brock (April 1995).

## Western Wireless Corporation

at the FCC governing the general rates, terms, and conditions of interconnection with CMRS providers. Interconnection tariffs provide assurances to CMRS providers that they have been offered reasonable terms and conditions of interconnection comparable to those offered other similarly-situated parties. Furthermore, a tariffing requirement would not necessarily prevent CMRS providers from negotiating individual contract tariffs based upon their unique requirements.

**2. Jurisdictional Issues: The Commission Has The Requisite Jurisdiction Under Section 201(a) and 332(c) of the Communications Act of 1934 To Adopt Its Tentative Conclusions, Or, in the Alternative, the Commission May Under the Telecommunications Act of 1996 Require LECs To Adopt “Bill and Keep” Reciprocal Compensation On An Interim Basis Until Cost Based Interconnection Rates Are Established.**

The Commission has the requisite authority to require “bill and keep” reciprocal compensation for the exchange of traffic between CMRS providers and LECs. The Commission’s jurisdiction is based upon its general authority under Sections 201(a) of the Communications Act to require common carriers to “establish physical connections with other common carriers,”<sup>17</sup> and its specific authority to “order a common carrier to establish physical connections” with a commercial mobile service under Section 332(c)(1)(B) of the Communications Act.<sup>18</sup>

In accordance with its authority to require common carriers to establish connections with other common carriers, including CMRS providers, the Commission adopted rules and policies

---

<sup>17</sup> 47 U.S.C. Section 201(a).

<sup>18</sup> 47 U.S.C. Section 332(c)(1)(B).

## Western Wireless Corporation

to govern these physical interconnections. First, a CMRS provider, as an interconnecting common carrier and not a customer or end user of a LEC, is entitled to all the rights of a co-carrier. Second, a CMRS provider is entitled to interconnection arrangements that minimize duplication of switching facilities.<sup>19</sup> Lastly, CMRS providers are entitled to mutual compensation for the local switching component of interconnection, such as “bill and keep” reciprocal compensation.

Due to the jurisdictionally-mixed nature of CMRS traffic, the Commission’s rules and policies governing LEC-CMRS arrangements must apply to LEC-CMRS interconnection arrangements without regard to whether the traffic is technically intrastate or interstate.<sup>20</sup> Otherwise, LECs will continue to impose anticompetitive and unreasonably discriminatory rates, terms, and conditions of interconnection on CMRS providers under the guise that interconnection arrangements are purely a state issue. Unlike interconnection arrangements between LECs and CLECs, interconnection arrangements between CMRS providers and LECs involve uniquely federal issues. In recognition of this fact, the Commission adopted specific rules and policies that apply to LEC-CMRS interconnection arrangements. The Commission should not now abandon its efforts to establish just and reasonable interconnection arrangements between LECs

---

<sup>19</sup> *Cellular Communications Systems*, 86 FCC 2d 469 (1981), *aff’d on recon.* 89 FCC 2d 58 (1982).

<sup>20</sup> In the *Cellular Interconnection Proceeding*, the Commission concluded that it has plenary jurisdiction under Section 201(a) to require cellular interconnection negotiations to be conducted in good faith. The Commission held that the conduct of interconnection negotiations cannot be separated into interstate and intrastate components because the failure to reach an interconnection agreement for intrastate services also precludes interconnection for interstate services. *Interconnection Order III*, 4 FCC Rcd at 2369.

## Western Wireless Corporation

and CMRS providers, and, in furtherance of its well-established mutual compensation requirement, the Commission should require “bill and keep” reciprocal compensation for the exchange of traffic between CMRS providers and LECs.

In the alternative, the Commission may lawfully require “bill and keep” compensation for the exchange of traffic between LECs and CMRS providers under the dual regulatory framework established in the Telecommunications Act of 1996. The Telecommunications Act of 1996 provides that the FCC “shall complete all actions necessary to establish regulations to implement the requirements of this section,” which, among other things, imposes a duty on LECs to establish reciprocal compensation arrangements for the transport and termination of telecommunications.<sup>21</sup> While the legislation preserves State authority over “access and interconnection obligations of local exchange carriers,”<sup>22</sup> it requires States to ensure that interconnection arrangements are consistent with the interconnection obligations imposed upon LECs by the legislation and regulations prescribed by the FCC.<sup>23</sup>

Consistent with the dual regulatory framework established by the Telecommunications Act of 1996, the Commission is charged with adopting rules and policies to implement the legislation. Sections 251 and 252 of the Telecommunications Act of 1996 establish detailed procedures for negotiating and entering into binding interconnection arrangements between LECs and other local service providers. The intent of these provisions is to ensure that interconnection

---

<sup>21</sup> *Telecommunications Act of 1996*, Section 251(d)(1).

<sup>22</sup> *Telecommunications Act of 1996*, Section 251(d)(3).

<sup>23</sup> *Telecommunications Act of 1996*, Section 253(c)(1).



**Western Wireless Corporation**

arrangements are cost-based, nondiscriminatory, and competitively-neutral. Accordingly, as part of its implementing regulations, the Commission should require “bill and keep” reciprocal compensation for the exchange of traffic between LECs and CMRS providers until: (i) a State determines that a LEC’s interconnection rates are cost-based, or (ii) a CMRS provider negotiates and enters into a binding cost-based interconnection agreement with a LEC. Absent such a requirement, CMRS providers will continue to be subject to unjust and unreasonably discriminatory interconnection rates, terms, and conditions. Furthermore, the Commission should immediately adopt an order requiring LECs to fully account for all payments made by CMRS providers on December 15, 1995, and thereafter, for the local switching component of interconnection.